**In the High Court of Punjab and Haryana, Chandigarh.**

**C.W.P.No.10723 of 2004**

Date of Decision: 5.7.2007

Executive Engineer, H.U.D.A., Gurgaon.

…Petitioner.

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon and Another.

…Respondents.

**CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL**
**HON'BLE MR.JUSTICE AJAI LAMBA**

Present: Ms.Promila Nain, Advocate
for the petitioner.

**JUDGMENT**

**ADARSH KUMAR GOEL, J.**

This petition challenges award of the Labour Court dated 6.1.2004 (Annexure P1) directing reinstatement of respondent No.2 with continuity of service and back wages to the extent of 50%.

The case of the workman in the Labour Court was that he joined as Beldar on 15.6.1994 and his services were terminated on 12.4.1995. At that time he was drawing salary of Rs.1219.50.

The Management contested the claim of the workman. It was stated that the petitioner was working only on daily wages. The workman had not completed 240 days as per requirement of Section 25-F of the Industrial Disputes Act, 1947 (for short "the Act"). The services of the petitioner could be terminated at any time.

The Labour Court drew adverse inference against the Management about the period of service rendered by the workman and thereby held that service of 240 days was completed by him and further held that there was clear violation of the provisions of Section 25-F of the Act. Accordingly, an order of reinstatement of the petitioner with continuity of service was passed with back wages to the extent of 50%.

While issuing notice of motion on 22.7.2004, the operation of impugned award was stayed subject to the provisions of Section 17-B of the Act. In spite of several attempts, respondent No.2 has not been served. Learned counsel for the petitioner states that respondent No.2 has never turned up to join service in pursuance of the award. In view of this position, he is proceeded against ex parte.

We have heard learned counsel for the petitioner and perused the record.

It is clear from the record that appointment of petitioner was made on daily wages. Adverse inference drawn by the Labour Court was not justified as according to law laid down in ***"Reserve Bank of India v. Gopinath Sharma and Another" (2006)6 Supreme Court Cases 221*** rendering of 240 days does not give rise to permanence. Even otherwise, the workman being daily wager terminated his services as per the contract falls in exception (bb) to Section 2 (oo) and in such a situation, Section 25F was not attracted.

In **Municipal Council, Samrala v. Raj Kumar, (**2006) 3 SCC 81, it was observed:-

> 8. Learned counsel appearing on behalf of the appellant raised a short question in support of this appeal. It was submitted that having regard to the definition of "retrenchment" as contained in Section 2(*oo*)(*bb*), the respondent having been appointed on a contract basis, the provisions of Section 25-F will have no application. Learned counsel appearing for the respondent, on other hand, submitted that the terms and conditions of appointment of the respondent nowhere suggest that the same was in relation to either in respect of a project or for a fixed period, and in that view of the matter the provisions of Section 2(*oo*)(*bb*) of the Act would have no application in the instant case. Learned counsel furthermore urged that from a perusal of the order dated 22-5-1997, whereby the services of the respondent were terminated, it would not appear that the services of the respondent were not required or the appellant did not consider it to be fit or appropriate or necessary to continue the respondent in service and thus the condition precedent contained in the offer of appointment has not been complied with. It was moreover urged that in view of the finding of fact arrived at by the learned Labour Court that the respondent herein was appointed intermittently without specifying any period of service as also the purpose for which he was appointed, the provisions of Section 25-F would be attracted.
>
> **9.** Section 2( *oo* )( *bb* ) of the Industrial Disputes Act reads as under:
>
> "2. *Definitions* .—In this Act, unless there is anything repugnant in the subject or context,—

* * *

(*oo*) 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(*a*) voluntary retirement of the workman; or

(*b*) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(*bb*) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;."

10. Clause (*oo*)(*bb*) of Section 2 contains an exception. It is in two parts. The first part contemplates termination of service of the workman as a result of the non-renewal of the contract of employment or on its expiry; whereas the second part postulates termination of such contract of employment in terms of stipulation contained in that behalf. The learned Presiding Officer of the Labour Court as also the High Court arrived at their respective findings upon taking into consideration the first part of Section 2(*oo*)(*bb*) and not the second part thereof. The circumstances in which the respondent came to be appointed have been noticed by us hereinbefore.

11. The appellant is a Municipal Council. It is governed by the provisions of a statute. The matter relating to the appointment of employees as also the terms and conditions of their services indisputably are governed by the provisions of the relevant

> Municipal Act and/or the rules framed thereunder. Furthermore, there is no doubt that the matter relating to the employment in the Municipal Council should be governed by the statutory provisions and thus such offer of appointment must be made by a person authorised therefor. The agenda in question was placed before the Executive Council with a view to obtain requisite direction from it wherefor the said letter was written. The reason for such appointment on contract basis has explicitly been stated therein, namely, that one post was vacant and two employees were on leave and in that view of the matter, services of a person were immediately required in the Council. Thus, keeping in view the exigency of the situation, the respondent came to be appointed on the terms and conditions approved by the Municipal Council.
>
> **12.** We have noticed hereinbefore that the respondent understood that his appointment would be short-lived. He furthermore understood that his services could be terminated at any point of time as it was on a contract basis. It is only in that view of the matter, as noticed hereinbefore, that he affirmed an affidavit stating that the Municipal Council of Samrala could dispense with his services and that they have a right to do so."

In **Gangadhar Pillai v. Siemens Ltd.**,(2007) 1 SCC 533 , it was observed:-

> **28.** It is not the law that on completion of 240 days of continuous service in a year, the employee concerned becomes entitled to for regularisation of his services and/or permanent status. The concept of 240 days in a year was introduced in the industrial law for a definite purpose. Under the Industrial Disputes Act, the concept of 240 days was introduced so as to fasten statutory liabilities upon the employer

to pay compensation to be computed in the manner specified in Section 25-F of the Industrial Disputes Act, 1947 before he is retrenched from services and not for any other purpose. In the event a violation of the said provision takes place, termination of services of the employee may be found to be illegal, but only on that account, his services cannot be directed to be regularised. Direction to reinstate the workman would mean that he gets back the same status.

**29.** In *Madhyamik Shiksha Parishad, U.P.* v. *Anil Kumar Mishra, (2005) 5 SCC 122,* this Court has categorically held: (SCC p. 124, para 5)

> "The assignment was an *ad hoc* one which anticipatedly spent itself out. It is difficult to envisage for them the status of workmen on the analogy of the provisions of the Industrial Disputes Act, 1947, importing the incidents of completion of 240 days' work. The legal consequences that flow from work for that duration under the Industrial Disputes Act, 1947, are entirely different from what, by way of implication, is attributed to the present situation by way of analogy. The completion of 240 days' work does not, under that law import the right to regularisation. It merely imposes certain obligations on the employer at the time of termination of the service. It is not appropriate to import and apply that analogy, in an extended or enlarged form here."

**30.** In *M.P. Housing Board* v. *Manoj Shrivastava, (2006) 2 SCC 702,* this Court held: (SCC p. 709, para 17)

> " *17* . It is now well settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularised in service. (See *Madhyamik*

*Shiksha Parishad, U.P.* v. *Anil Kumar Mishra (supra)*; *Executive Engineer, ZP Engg. Divn.* v. *Digambara Rao,(2004) 8 SCC 262*; *Dhampur Sugar Mills Ltd.* v. *Bhola Singh, (2005) 2 SCC 470*; *Manager, Reserve Bank of India* v. *S. Mani,(2005) 5 SCC 100* and State of UP v. *Neeraj Awasthi (2006) 1 SCC 667.*"

**33.** Our attention was also drawn to *Union of India* v. *Ramchander (2005) 9 SCC 365,* wherein again engagement of the workman on a regular basis for a period of 89 days on each occasion was held to be impermissible in law stating: (SCC p. 366, para 4)

> " *4* . The respondents were appointed against casual labourers but nevertheless they continued in service for four spells and that too their reappointments were made immediately within a few days of termination on completion of 89 days. It shows that sufficient work was available with the employer and had there been no termination on completion of 89 days, they would have completed 240 days of continuous employment. In that view of the matter the appellants had violated Section 25-G of the Industrial Dispute s Act. We do not find any error or illegality in the decision rendered by the Division Bench. We direct the appellants to re-employ the respondents as daily-wagers."

**34.** In that case, this Court did not lay down any law having universal application. Directions were issued in the facts and circumstances of the case. It is worthwhile to note that this Court did not direct regularisation of services of the workman but merely directed the appellants therein to re-employ the respondents as daily-wagers. The said decision,

therefore, does not have any application in the instant case.

**35.** Yet again, reliance has been placed on *Haryana State Electronics Development Corpn. Ltd.* v. *Mamni, (2006) 9 SCC 434,* wherein having regard to the fact situation obtaining therein the action on the part of the employer to terminate the services of an employee on regular basis and reappoint after a gap of one or two days was found to be infringing the provisions of Section 25-F of the Industrial Disputes Act. This Court held: (SCC p. 437, para 11)

> " *11* . In this case the services of the respondent had been terminated on a regular basis and she had been reappointed after a gap of one or two days. Such a course of action was adopted by the appellant with a view to defeat the object of the Act. Section 2( *oo* )( *bb* ) of the Industrial Disputes Act, 1947, therefore, is not attracted in the instant case."

**36.** Unlike the Act, there is no provision for prevention of unfair labour practices under the Industrial Disputes Act. The view of the High Court as upheld by this Court, merely negatived a contention that such appointment came within the purview of Section 2( *oo* )( *bb* ) of the Industrial Disputes Act. This Court noticed various decisions rendered by it as regards payment of back wages and instead and place of reinstatement in service, compensation was directed to be paid.

In **Himanshu Kumar Vidyarthi v. State of Bihar,** AIR 1997 SC 3657, it was observed:-

> **"3.** The admitted position is that Petitioner 1 came to be appointed as Assistant, Petitioner 2 as Driver and Petitioners 3 to 5 as Peons on different dates, viz., on 1-8-1988, 10-11-1989, 31-5-1987 and 22-4-1992. They were appointed in the Co-operative Training

> Institute, Deoghar by its Principal. They are admittedly daily-wage employees. Their services came to be terminated by the Principal. Calling that termination in question, they filed a writ petition in the High Court. The main grievance of the petitioners before us is that termination of their services is in violation of Section 25-F of the Industrial Disputes Act, 1947. The question for consideration, therefore, is: Whether the petitioners can be said to have been "retrenched" within the meaning of Section 25-F of the Industrial Disputes Act? Every department of the Government cannot be treated to be "industry". When the appointments are regulated by the statutory rules, the concept of "industry" to that extent stands excluded. Admittedly, they were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of "retrenchment" therefore, cannot be stretched to such an extent as to cover these employees. The learned counsel for the petitioners seeks to contend that in the High Court, the petitioners did not contend that it is a case of retrenchment but termination of their services is arbitrary. Since they are only daily-wage employees and have no right to the posts, their disengagement is not arbitrary."

In **State of U.P. v. Neeraj Awasthi**,(2006) 1 SCC 667, it was observed:-

> 36.Submission of the learned counsel appearing on behalf of the employees is that the procedures prescribed by reason of the Regulations are applicable to the regular employees. It is so. The question which, however, falls for consideration is as to whether any appointment can be made

dehors the provisions of the Act and the Rules. Our attention has been drawn to the definition of "employee" which does not include persons employed on daily wages, work-charged and/or part-time basis. If the expression "employee" does not bring within its fold any person employed on daily wages, work-charged or on part-time basis, the same would mean that the persons so appointed would not be employees within the meaning of the said Regulations. It would, therefore, not be correct to contend that the Market Committee or the Board has the jurisdiction to appoint anybody on daily wages, work-charged or on part-time basis dehors the Rules. The power to make appointments by the Committee or the Board whether contained in Section 23 or Section 26-F of the Act are statutory in nature. In the absence of any power conferred upon them to appoint any employee dehors the provisions of Sections 23 and 26-F and the Regulations framed thereunder, indisputably would mean that such appointments are dehors the Act and the Rules. The Rules also provide that any appointment made by the Committee under sub-section (1) of Section 23 shall be intimated within 30 days of such appointment to the Director or to such other officer as may be authorised by the Director in this behalf. It implies that although the Market Committee may have power to make appointments, such appointments can be made in relation to the posts created therefor by the Board wherefor requisite intimation has to be given to the Director or the officer authorised in this behalf. We may assume that for meeting the exigencies of situations it may be possible for the Committee or the Board to appoint a person on ad hoc basis. Such ad hoc employees, however, being not

"employees" within the meaning of the provisions of the Act and the Regulations, a legal relationship between the employer and the employee would not come into being. As no legal relationship of employer and employee comes into being, evidently, such persons do not derive any status. They *a fortiori* derive no legal right to continue in service subject, of course, to compliance with the provisions of any other Act or the Rules conferring certain benefits to them. (See *State of M.P.* v. *Dharam Bir, (1998) 6 SCC 165*).

60. In *Manager, Reserve Bank of India* v. *S. Mani (2005) 5 SCC 100*, *Umarani,(2004) 7 SCC 112,* was followed holding that in law 240 days of continuous service by itself does not give rise to permanence which reason has weighed with the opinion of the learned Single Judge of the High Court.

76. In the instant case, furthermore, no post was sanctioned. It is now well settled when a post is not sanctioned, normally, directions for reinstatement should not be issued. Even if some posts were available, it is for the Board or the Market Committee to fill up the same in terms of the existing rules. They, having regard to the provisions of the Regulations, may not fill up all the posts."

For the above reasons, we allow this petition and set-aside the impugned award.

**( Adarsh Kumar Goel)**
**Judge**

**July 5, 2007** **(Ajai Lamba)**
**"DK"** **Judge**